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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,164	11/26/2001	Robert H. Keller	930068-2002.REI	9474
7590 07/05/2005			EXAMINER	
Ronald R. Santucci Frommer Lawrence & Haug, LLP 745 Fifth Avenue New York, NY 10151			WAX, ROBERT A	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/994,164	Applicant(s) KELLER ET AL.	
	Examiner Robert A. Wax	Art Unit 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,22-24,27 and 34 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,6,22-24,27 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed April 15, 2005 was not entered since it was non-compliant. The amendment filed April 26, 2005 was, however, entered since it contains a complete claim listing. The amendment of April 26, 2005 is not in the correct format for an amendment in a reissue application. Amendments to the claims in a reissue application may only be made as set forth in 37 CFR 1.173(b)(2), as follows:

- a. Original patent claims must not be renumbered. 37 CFR 1.173(e).
- b. Claims added to the patent must follow the number of the highest numbered patent claim (37 CFR 1.173(e)), and must be underlined in their entirety (37 CFR 1.173(d)).
- c. A claim (original or new) may be deleted by a statement requesting the deletion of a specified claim without presentation of the text of such claim. 37 CFR 1.173(b)(2).
- d. Any change to the text of a claim (original or new) must be presented as an entire numbered claim. All subject matter being added to an original patent claim must be underlined. All subject matter being deleted from an original patent claim must be placed between brackets. 37 CFR 1.173(b)(2) and (d). Subject matter being added to a new claim requires rewriting (and underlining) of the entire new claim.

- e. If a claim is amended during reissue prosecution, a parenthetical expression "(amended)," "(twice amended)," etc., should follow the original claim number. 37 CFR 1.173(b)(2). Alternatively, applicant may effectively re-write a claim by presenting it as a new (fully underlined) claim with a new claim number, and canceling the old claim. Brackets and underlining are to be used to reflect only those changes in the text from the original patented text and not from any previous amendment in the reissue application. § 1.173(g).

In addition, Applicants should note that the Latin names of microorganisms in claim 27 need to be italicized as well as capitalized.

2. Claims 1, 6, 22-24, 27 and 34 are objected to for being in improper format as discussed immediately above.

Reissue Applications

3. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,262,019 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

4. The reissue oath/declaration filed with this application is defective because it now fails to identify at least one error that is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. The original declaration stated that the error was that the inventors could "claim compositions of matter and systems of administration thereof having an admixture including of N-acetylcysteine, N-acetyl-d-glucosamine and vitamin C present in ratios set forth in new claims 30-33 submitted in the reissue application." This oath/declaration is not proper since it now is directed to an error that does not appear in the pending claims. In order to receive an allowance of the instant reissue application a new declaration must be filed that specifies at least one error to be corrected.

5. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following reasons as well:

The declaration entitled Reissue Declaration and Power of Attorney contains a blank on the first line of text – this is inappropriate. Since claim 34 was first filed in the

amendment of June 14, 2004, it is not mentioned anywhere in the declarations. Each inventor is not identified by full name and country of citizenship as required by 35 U.S.C. 115 and 37 CFR 1.63(a)(3). Each inventor's residence and mailing address must also be provided, if they have not been supplied in the application data sheet (37 CFR 1.76). The oath or declaration does not state that the person making the oath or declaration believes the named inventor(s) to be the original and first inventor(s) of the invention claimed as required by 37 CFR 1.63(a)(4). The oath or declaration does not state that the person signing believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought as required by 37 CFR 1.63(b)(2). Since the declaration was filed in two separate parts the assignee and inventors attested to different items, the new declaration must be signed as one document. Another reason the new declaration must be signed as one document is because the instant application qualifies as a "broadening reissue" since the new claims will be broader than the original claims.

6. Claims 1, 6, 22-24, 27 and 34 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Conclusion

7. No claim is allowed.

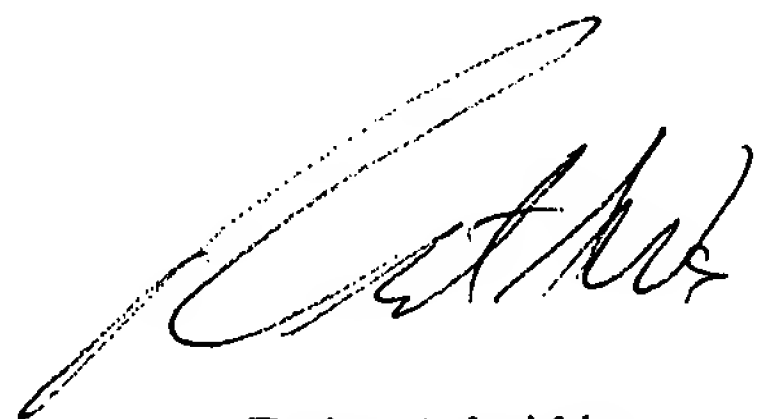
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Wax whose telephone number is (571) 272-0623. The examiner can normally be reached on Monday through Friday, between 9:00 AM and 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Robert A. Wax', is positioned above the printed name and title.

Robert A. Wax
Primary Examiner
Art Unit 1653

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